

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Applicant's or agent's file reference
see form PCT/ISA/220

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

International application No
PCT/GB2004/002413

International filing date (day/month/year)
07.06.2004

Priority date (day/month/year)
13.06.2003

International Patent Classification (IPC) or both national classification and IPC
A61B17/34

Applicant
SURGICAL INNOVATIONS LIMITED

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1. This opinion contains indications relating to the following items:

- Box No I Basis of the opinion
- Box No II Priority
- Box No III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No IV Lack of unity of invention
- Box No V Reasoned statement under Rule 43bis 1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No VI Certain documents cited
- Box No VII Certain defects in the international application
- Box No VIII Certain observations on the international application

2 FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66 1b/s(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220

3 For further details, see notes to Form PCT/ISA/220

Name and mailing address of the ISA:



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10/560886

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No
PCT/GB2004/002413

IAP20 Rec'd PCT/PTO 12 DEC 2005

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item

This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material:

- a sequence listing
- table(s) related to the sequence listing

b. format of material:

- in written format
- in computer readable form

c. time of filing/furnishing:

- contained in the international application as filed.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority for the purposes of search.

3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No
PCT/GB2004/002413

Box No. II Priority

1 The following document has not been furnished:

copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a))
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1 Statement

Novelty (N)	Yes: Claims	1-11
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-11
Industrial applicability (IA)	Yes: Claims	1-11
	No: Claims	

2. Citations and explanations

see separate sheet

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Re Item V.

1. The present application does not meet the criteria of Article 33(1) PCT, because the subject matter of claims 1-11 does not involve an inventive step in the sense of Article 33(3)PCT.
 - 1.1 Document **WO 01/89397 A (D1)** discloses a seal for a laparoscopic port comprising a base, a multiplicity of radially movable jaws and a rotatable actuator as claimed in lines 1-10 of present claim 1.
 - 1.2 A skilled person, faced with the problem of making the seal of D1 more suitable to be used with an instrument having a particular diameter, can be expected to know **WO 01/62167 A (D2)** in which a laparoscopic seal is disclosed with a click stop arrangement to hold the spreading device in an intermediate position (see page 10, paragraph 6 - page 11, paragraph 1; Figs. 2 and 3) He could therefore be expected to incorporate these features in D1 to obtain the inherent benefits, thus arriving at the subject-matter of claim 1.
 - 1.3 Dependent claims 2-11 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step since these features are either already known from D1 or D2 or they merely relate to minor obvious modifications, see also **US 3920215 A (D3)** and **US 5125915 A (D4)**.